

~~9/20/99~~ PURSUANT

TO FRCP RULES 58 & 79a

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

1 MIGUEL A. ANDINO-PASTRANA,

2 Plaintiff,

4 v.

5 MUNICIPALITY OF SAN JUAN;
6 HON. SILA MARIA CALDERON, as
7 Mayor of San Juan, and EDUARDO
8 RIVERO ALBINO, as an officer
of said Municipality,

9 Defendants.

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, PRRECEIVED & FILED
99 SEP 20 PM 2:28OPINION AND ORDER

13 Plaintiff, Miguel A. Andino-Pastrana, brings this action
14 against Defendants, the Municipality of San Juan ("the
15 Municipality"); Sila María Calderón, Mayor of the Municipality of San
16 Juan, in her official capacity; and Eduardo Rivero-Albino ("Rivero"),
17 Director of the Department of Economic Development and Tourism of the
18 Municipality of San Juan, in his official capacity, alleging
19 political and racial discrimination pursuant to 42 U.S.C. § 1983.
20

I.

Factual Background

23 Since 1968, Plaintiff has been a civil servant providing
24 educational training and employment opportunities to disadvantaged
25 persons. On February 16, 1993, Plaintiff became Associate Director
26

(40)n

1 Civil No. 98-1903 (JAF)

2-

1 of the Training and Employment Program ("TEP") of the Municipality.
2 The TEP is funded largely through federal government grants provided
3 to the Municipality under the rubric of the Job Training Partnership
4 Act ("JTPA"), P.L. 97-300, 29 U.S.C. §§ 1501-1792b. The position of
5 Associate Director is a career position.

6 Plaintiff alleges that he performed the duties of his position
7 in an efficient, professional, and successful manner and that his
8 evaluations were unceasingly excellent. Plaintiff maintains that the
9 federal auditors assigned to track JTPA funds similarly rated
10 Plaintiff's program.

12 Following the November 1996 election, a new municipal
13 administration assumed power. Defendant Calderón, a member of the
14 Popular Democratic Party, was elected Mayor of San Juan. Plaintiff
15 had been an active supporter of the PDP and the former Mayor, Héctor
16 Luis Acevedo. Defendant Calderón took office in January 1997, and
17 she named Defendant Rivero to the post of Director of the Department
18 of Economic Development and Tourism. Therefore, Defendant Rivero
19 became Plaintiff's supervisor.

21 Plaintiff alleges that Defendant Rivero, from the day in which
22 he assumed his post in February 1997, blatantly discriminated against
23 him due to political and racial reasons. Plaintiff complains that
24 Defendant clearly ignored Plaintiff's position within the
25 organizational hierarchy by dealing directly with Defendant's
26

Civil No. 98-1903 (JAF)

3-

1 subordinates. Plaintiff contends that Defendant coordinated with
2 Vilma Rodríguez, the finance director and a subordinate of Plaintiff,
3 to begin a financial reserve to be used for the purchase of specialty
4 trucks equipped with amplified loud speakers which are normally used
5 in political campaigns ("the trucks"). To supply funds for the
6 reserve, Plaintiff alleges that Defendant Rivero told Ms. Rodríguez
7 to dismiss program employees. Ms. Rodríguez reported this to
8 Plaintiff who then confronted Defendant Rivero and objected to such
9 action. Plaintiff contends that Defendant Rivero countered that if
10 the employees were not dismissed Plaintiff would be responsible for
11 finding \$250,000 for the reserve. Plaintiff maintains that Defendant
12 Rivero never informed Plaintiff that the reserve would be used to
13 purchase the trucks.

14
15 Subsequently, in April 1997, Defendant Rivero had to defend his
16 department's budget before the Municipal Assembly. Plaintiff alleges
17 that he fully intended to attend the meeting but that several moments
18 prior to his departure for the meeting one of Defendant Rivero's
19 aides, Ms. Maru Roselli, telephoned and informed him that he could
20 attend the presentation, but that neither he nor Ms. Vilma Rodríguez
21 should sit next to Defendant Rivero. Plaintiff and Ms. Rodríguez are
22 both Black/African-American and Defendant Rivero is white.

23
24 Plaintiff also alleges a separate incident in which Defendant
25 Rivero sent another one of his aides, Mr. César Muñoz, to meet with
26

Civil No. 98-1903 (JAF)

4-

1 Plaintiff's subordinates in Plaintiff's absence. Upon becoming
2 informed about the meeting, Plaintiff confronted Mr. Muñoz and
3 announced that he was the proper person to speak to concerning the
4 program. At this point, Plaintiff alleges that Mr. Muñoz informed
5 Plaintiff that the "bulldozer was coming," and the Defendant Rivero,
6 with the blessing of Defendant Calderón, planned to be the PDP
7 mayoral candidate in the 2000 elections. Plaintiff further alleges
8 that Mr. Muñoz informed him that Defendant Rivero was removing former
9 Mayor Acevedo's structures and people, which included Plaintiff
10 because he was an "Acevedo man." According to Plaintiff, Mr. Muñoz
11 further informed him that the trucks Defendant Rivero wanted to
12 finance with the program's funds were going to be used in promoting
13 Defendant Rivero's image as a successful executive within the
14 municipality.

16 In June 1997, Defendant Rivero met with Plaintiff and informed
17 him that he was removing him from his post and transferring him to a
18 different position. Plaintiff inquired about the reasons for the
19 transfer, and Defendant purportedly stated that he and Defendant
20 Calderón needed to be surrounded by "refreshing people who enjoyed
21 their confidence." Defendant Rivero informed Plaintiff that he had
22 two options: A transfer to either the Housing Division or the Capital
23 Improvements Division. Plaintiff contends that neither position was
24 appropriate for a career employee with his seniority. Thus,
25
26

Civil No. 98-1903 (JAF)

5-

1 Plaintiff Andino refused the transfer, informing Defendant that he
 2 was a career employee with a vested interest in his position as
 3 Director of Training and Employment and that he was left with no
 4 option except to go before the Merit System Protection Board
 5 ("JASAP") and a court of law. Plaintiff contends that Defendant
 6 Rivero responded that he and Defendant Calderón "had removed everyone
 7 they wanted, and that they did not care about the courts, or JASAP."

8

9 On July 10, 1997, Plaintiff received a letter from Defendant
 10 Calderón transferring him to the Capital Improvements Division
 11 effective four days later, on July 14, 1997. Plaintiff appealed this
 12 decision to the JASAP on August 8, 1997. Miguel A. Andino Pastrana v.
 13 Municipio de San Juan, case no. CT-X-97-08-248. This case is still
 14 pending.

15 Plaintiff maintains that since he filed for review before the
 16 JASAP, Defendant Rivero has retaliated against Plaintiff by assigning
 17 him to clerical tasks that are not in accord with his career
 18 position. Some of the specific tasks that Plaintiff alleges include:
 19 Collecting rent from tenants of the Municipality; monthly checking of
 20 lease contracts that have expired; and counting the available spaces
 21 in tombs in cemeteries owned by the Municipality. Plaintiff
 22 maintains that he currently shares a tiny office with a
 23 Black/African-American co-worker and that they both use the same
 24

25

26

Civil No. 98-1903 (JAF)

6-

1 desk. Plaintiff alleges that their office is known mockingly amongst
 2 Defendant Rivero's aides as the "monkey cage."

3 José A. Franqui-González replaced Plaintiff as Director of the
 4 TEP. Mr. Franqui-González is a white temporary employee of the
 5 Municipality and is purportedly a good friend of Defendant Rivero.

6 Defendants move to dismiss the claims alleging that they are
 7 time-barred by the statute of limitations.
 8

9 **II.**

10 **Statute of Limitations**

11 Puerto Rico's one-year statute of limitations governing tort
 12 actions applies with equal force to section 1983 claims. See
 13 Articles 1802 and 1868 of the Civil Code, 31 L.P.R.A. §§ 5141(d) and
 14 5298. Guzmán-Rivera v. Rivera-Cruz, 29 F.3d 3, 4-5 (1st Cir. 1994);
 15 Lafont-Rivera v. Soler-Zapata, 984 F.2d 1, 2 (1st Cir. 1993). The
 16 accrual period in a section 1983 action starts when the plaintiff
 17 knows, or has reason to know, of the injury on which the action is
 18 based. Id. at 3. Nonetheless, there are three methods of tolling the
 19 statute of limitations: Filing before the courts; extrajudicial claim
 20 of the creditor; and by act of acknowledgment of the debt by the
 21 debtor. Article 1813 of the Civil Code, 31 L.P.R.A. § 5303. These
 22 tolling methods are applicable to the one-year statute of limitations
 23 and consequently to section 1983 cases. Fernández v. Chardón, 681
 24 F.2d 42, 49 (1st Cir. 1982); Hernández del Valle v. Santa Aponte, 575
 25
 26

Civil No. 98-1903 (JAF)

7-

1 F.2d 321, 323 (1st Cir. 1978) (in cases seeking monetary
 2 compensation). "This tolling is effective only with regard to
 3 identical causes of action; the filing of one action does not toll
 4 the statute of limitations for all claims arising out of the same
 5 facts." Id.; Torres v. Superintendent of the Police of Puerto Rico,
 6 893 F.2d 404, 407 (1st Cir. 1990) (statute of limitations not tolled
 7 where remedy sought before administrative board, the Investigation,
 8 Processing and Appeals Commission of the Police Department, was not
 9 identical to the remedy sought under section 1983); Ramírez de
 10 Arellano v. Alvarez de Choudens, 575 F.2d 315 (1st Cir. 1978)
 11 (mandamus action before Puerto Rico Commonwealth Board did not toll
 12 statute of limitations for section 1983 claim); Graffals v. García,
 13 550 F.2d 687, 688 (1st Cir. 1977) (one-year statutory period not
 14 tolled by an administrative appeal of the dismissal); cf Torres v.
 15 Padilla, 622 F.Supp. 1276, 1279 (D.P.R. 1985) (filing of Puerto Rico
 16 superior court action tolled statute of limitations for federal
 17 section 1983 claim, even though superior court action was voluntarily
 18 dismissed by employee).

21 In this case, Defendants allege that Plaintiff was notified of
 22 the change in his position in June 1997 and that the administrative
 23 review filed before JASAP failed to satisfy the requirements to toll
 24 the one-year statute of limitations. Therefore, since Plaintiff did
 25 not file the instant suit until August 7, 1998, Defendants maintain
 26

Civil No. 98-1903 (JAF)

8-

1 that the cause of action is time-barred. Plaintiff counters that he
 2 was not notified formally of a change in his position until July 10,
 3 1997, when he received the letter concerning his transfer from
 4 Defendant Calderón. Subsequently, he filed for review before JASAP
 5 on August 8, 1997, which he claims continues to toll the statute of
 6 limitations, since the decision is pending.

7 The relevant inquiry is whether Plaintiff's submission to JASAP
 8 is sufficient to toll the statute of limitations. We begin by
 9 examining the remedies requested in each action. Del Valle, 575 F.2d
 10 at 323. Before JASAP, Plaintiff requested nullification of his
 11 transfer, reinstatement to his career position, injunctive relief to
 12 end the harassment, and damages of \$1,000,000. Docket Document
 13 No. 9, Exh. 2, p. 3. The present complaint seeks the same monetary
 14 damages and "any and all relief the Court deems just, reasonable,
 15 appropriate and necessary to correct the illegal and discriminatory
 16 conduct of defendants toward [Plaintiff]." Docket Document No. 2,
 17 p. 10. Clearly, different remedies are being sought. Cf Torres, 893
 18 F.2d at 404 (holding that appeal to police administrative board did
 19 not request same relief as federal section 1983 action). The main
 20 claim in the instant case is for monetary damages, while in the
 21 administrative review Plaintiff was seeking revocation of his
 22 transfer, reinstatement and an injunction. Nonetheless, Plaintiff
 23 urges us to overlook any differences and hold that since both actions
 24
 25
 26

Civil No. 98-1903 (JAF)

9-

1 seek monetary damages, they are the same action. We decline to do
 2 so. We find First Circuit case law to be clear on this point and are
 3 constrained from reaching a different result.

4 Furthermore, the Supreme Court of Puerto Rico has definitively
 5 held that actions before JASAP do not toll the statute of limitations
 6 for state claims when they do not pursue the same objectives. Cintrón
 7 v. Estado Libre Asociado de P.R., 127 D.P.R. 582 (1990). An action
 8 before JASAP is regulatory in nature. Therefore, JASAP has no
 9 authority over violations of statutory or constitutional rights. Id.
 10 Thus, the Cintrón court concluded that the appropriate avenue for
 11 vindication of a state tort action was directly through the
 12 judiciary. Otherwise, the action may become time-barred. We have an
 13 analogous situation before us. JASAP has no authority to address
 14 Plaintiff's alleged constitutional violation. Therefore, it is
 15 simply disingenuous to posture that filing a claim before JASAP would
 16 toll the statute of limitations on a constitutional claim. As such,
 17 Plaintiff's filing for review before JASAP did not toll the statute
 18 of limitations for his federal section 1983 claim.

21 Thus, we are left to determine whether Plaintiff filed his
 22 complaint within the one-year statute of limitations. Even assuming
 23 that the proper date from which to determine accrual is July 10,
 24 Plaintiff's action is time-barred. Plaintiff did not file the
 25
 26

1 Civil No. 98-1903 (JAF)

10-

1 instant suit until August 7, 1998, well beyond the statutory time
2 limit.

3 **III.**

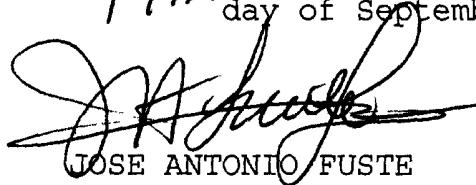
4 **Conclusion**

5 In light of the foregoing, we **GRANT** Defendants' motion to
6 dismiss. Judgment shall be entered accordingly.

7 **IT IS SO ORDERED.**

8 San Juan, Puerto Rico, this

17th day of September, 1999.



10
11 JOSE ANTONIO FUSTE
12 U. S. District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26